

HOUSE BILL 3401
By Fitzhugh

AN ACT to amend Tennessee Code Annotated, Title 50 and Title 56, relative to workers' compensation.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 50-6-241, is amended by deleting the section in its entirety and by substituting instead the following:

Section 50-6-241.

(a) (1) In cases where an injured employee is eligible to receive any permanent partial disability benefits, pursuant to § 50-6-207(3)(A)(i) and (F), and the pre-injury employer returns the employee to employment at a wage equal to or greater than the wage the employee was receiving at the time of injury, the maximum permanent partial disability award that the employee may receive is the medical impairment rating determined by the treating physician pursuant to the provisions of the American Medical Association Guides to the Evaluation of Permanent Impairment (American Medical Association), the Manual for Orthopedic Surgeons in Evaluating Permanent Physical Impairment (American Academy of Orthopedic Surgeons), or in cases not covered by either of these, an impairment rating by any appropriate method used and accepted by the medical community. In making determinations, the court shall consider all pertinent factors, including lay and expert testimony, employee's age, education, skills and training, local job opportunities, and capacity to work at types of employment available in claimant's disabled condition.

(2) In accordance with this section, the courts may reconsider, upon the filing of a new cause of action, the issue of industrial disability. Such reconsideration shall examine all pertinent factors, including lay and expert testimony, employee's age, education, skills and training, local job opportunities, and capacity to work at types of employment

available in claimant's disabled condition. Such reconsideration may be made in appropriate cases where the employee is no longer employed by the pre-injury employer and makes application to the appropriate court within one (1) year of the employee's loss of employment, if such loss of employment is within four hundred (400) weeks of the day the employee returned to work. In enlarging a previous award, the court must give the employer credit for prior benefits paid to the employee in permanent partial disability benefits, and any new award remains subject to the maximum established in subsection (b).

(b) Subject to factors provided in subsection (a) of this section, where an injured employee is eligible to receive permanent partial disability benefits, pursuant to § 50-6-207(3)(A)(i) and (F), and the pre-injury employer does not return the employee to employment at a wage equal to or greater than the wage the employee was receiving at the time of injury, the maximum permanent partial disability award that the employee may receive is not limited by subsection (a) and the award may not exceed the maximum award otherwise available pursuant to this chapter. In making such determinations, the court shall consider all pertinent factors, including lay and expert testimony, employee's age, education, skills and training, local job opportunities, and capacity to work at types of employment available in claimant's disabled condition.

SECTION 2. Tennessee Code Annotated, Section 50-6-242, is amended by deleting the section in its entirety.

SECTION 3. Tennessee Code Annotated, Section 50-6-405, is amended by adding the following as a new subsection:

(j) The commissioner of commerce and insurance may request any information or data the commissioner deems to be helpful in determining that a self-insuring employer or pool authorized under this part is financially and actuarially sound for the purposes of meeting obligations imposed under this chapter. The commissioner may request, but not be limited to requesting, financial statements, audits and any information that the commissioner may request of an insurer under title 56. The commissioner may

use any power and any sanction or remedy available under title 56 for use with respect to an insurer in order to obtain such information from such self-insured employer or pool.

SECTION 4. Tennessee Code Annotated, Section 50-6-205(b)(3), is amended by deleting the subdivision in its entirety and by substituting instead the following:

(3) Any employer or such employer's insurance carrier who fails to pay compensation as herein provided shall suffer a penalty on any unpaid installments of:

(A) fifteen percent (15%) on payments that are paid between fifteen (15) days and twenty (20) days after the payment is due;

(B) twenty percent (20%) on payments that are paid between twenty-one (21) days and thirty (30) days after the payment is due; and

(C) thirty percent (30%) on payments that are paid more than thirty (30) days after the payment is due.

SECTION 5. Tennessee Code Annotated, Section 50-6-236, is amended by adding the following as a new subsection:

(m) A workers' compensation specialist is authorized to set mandatory meetings of the parties for a benefit review conference. A specialist is also authorized to hold such mandatory benefit review conferences, to order initiation of temporary disability and medical benefits under this chapter, and to settle cases.

SECTION 6. Tennessee Code Annotated, Section 50-6-239(c), is amended by deleting subdivisions (2) and (3) and by substituting instead the following as a new subdivision (2):

(2) A benefit review conference program is mandatory for all cases under this chapter and a court may not conduct a trial or enter an agreed order without a report from a workers' compensation specialist pursuant to § 50-6-240, unless otherwise permitted by this section.

SECTION 7. Tennessee Code Annotated, Section 50-6-225(a)(1), is amended by inserting the following language immediately after the first sentence of the subdivision:

Notwithstanding any other provision of this chapter, an action may not be filed under this section without the filing of a report or settlement pursuant to Section 50-6-240, unless a

benefit review conference is optional or otherwise excused pursuant to Section 50-6-239.

SECTION 8. The advisory council on workers' compensation shall study the issues relating to medical costs in workers' compensation cases and bring a recommendation concerning a medical fee schedule to the general assembly on or before January 15, 2005.

SECTION 9. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 10. This act shall take effect July 1, 2004, the public welfare requiring it.